INDEX

adjudication
  ideology and 283–300
aesthetics
  jurisprudence and 310–15
aggregates
  constitutive rights and 190–93
altruism principle
  psychiatric injury and, in negligence 645–66
ambiguities
  of coercion 45–57
Aristotle
  on money and exchange of goods 358–60
Atiyah, P. S.
  contractual liability and voluntary undertakings and 210, 212–13, 214–15
Austin, J.
  institutional sovereignty theory 132–3
  on rights and wrongs 5–6, 12, 16
  wrongs and not-wrongs 25–7

Barker, K.
  assumption of responsibility justification 628–30
  on rights and remedies 13, 14–15
  two-tiered not-wrongs 29–31
Blackstone, W.
  scheme of rights and wrongs 4–6, 13, 15–16
  wrongs and not-wrongs 25–7
book reviews
  Autonomy in International Contracts (Nygh) 247–69
  A Critique of Adjudication (Kennedy) 283–300
  The European Court of Justice (Rasmussen) 457–68
  The European Court of Justice – The Politics of Judicial Integration (Dehousse) 457–68
  From Occupation to Interim Accords: Israel and the Palestinian Territories (Shehadeh) 469–76
  In Defence of Legal Positivism: Law Without Trimmings (Kramer) 703–22
  Law and Competition in Twentieth Century Europe: Protecting Prometheus (Gerber) 155–66
  Law and Disagreement (Waldron) 271–82
  Law and Image: The Authority of Art and the Aesthetics of Law (Dorzimas and Nead) 301–15
  Recrafting the Rule of Law: the Limits of Legal Order (Dyzenhaus) 667–72
  Regulating Contracts (Collins) 477–98
  Responsibility and Fault (Honoré) 683–701
Burrows, A.
  on sabotage of rights classification by causative events 22

change of position defence
  unjust factors and restitution 559–66
coercion 39-41, 61–2
  ambiguities of 45–57
  coercive laws 42–5
  legal considerations and legal institutions 41–2
  place of sanctions 57–60
Collins, H.
  market relations and regulation of contract 336–8
  three normative frameworks orienting contractual behaviour 321
common law
  human rights and 499–532

community
  constitutive rights and 202–3
competition law
  European 155–66
conflict of laws
  freedom of contract and 247–69
consent
  default rules in contract and 369–73
constitutionalisation
  law and politics in the European Court of Justice 457–68
constitutive rights 197-200, 203–4
  community 202–3
  constitutive aspects of special and general rights 193–7
  constitutive methodology 201–2
  essentialism 200–201
  groups and aggregates 190–93
  rights and identity 185–7
  rights in relation 188–90
  see also rights
constructive trust
  remedial 17-19, 24
contract
  default rules in 367–90
  freedom of, conflict of laws and 247–69
  governance and 317–51
  liability in, voluntary undertakings and 205–26
  regulation of 334-49, 477–98
conventionalism
  default rules in contract and 374–82
courts
  of last resort, dissent in 221–46
  see also House of Lords; sovereignty

default rules
  in contract 367–90
defence
  change of position, unjust factors and restitution 559–66
dependence test 98–100
dissent
  arguments for and against 239–44
  civil law jurisdictions 237
  incommensurable disagreements 227–33
  legal basis of 233–7
  moral disagreement, nature and authority of law and, 271–82
  nature of disagreement in the law 221–7
  United States of America 238–9
  when should judges dissent 244–6
Duff, R. A.
  recklessness 537–8
duty
  of pregnant woman to undergo Caesarean section 407–36
Dworkin, R.
  concept of equality 354–8
  currency and equality of resources 360-64

ECHR *see* European Convention on Human Rights; European Court of Human Rights
efficiency
  default rules in contract and 382–9

employment
  public service 167-83
essentialism
  constitutive rights and 200–201
European Convention on Human Rights (ECHR)
  socio-economic rights and 86–7
European Court of Human Rights (ECHR)
  distinguishing between statements of fact and value-judgements and 95–7
  functional approach to regulation and 177–8
  Lingens v Austria 91–5
European Court of Justice
  law and politics in 457–68

fact
  Human Rights Act 1998 and 89–107
fault
  responsibility and 683–701
Finnis, J.
  motives 540–41
Freedland, M.
  public service, defined 173
freedom of contract
  default rules and 247–69
  see also contract

Germany
  Federal Constitutional Court standards, House of Lords compared 391–406
governance
  contract and 317–51
groups
  constitutive rights and 190–93
Grundnorm 134-5, 138–9

Habermas, J.
  legitimacy and techniques 611–14
  "thick" conception of procedural law 608–11
Hart, H.L.A.
  rule of recognition 135–6
  special and general rights distinguished 187n7
Heuston, R.
  rule-based sovereignty 133, 134
Heydon, J. D.
  tort liability for intention 550
House of Lords
  dissent in 221–46
  standards, German Federal Constitutional Court compared 391–406
human rights
  common law and 499–532
  fact and opinion, Human Rights Act 1998 and 89–107
  see also rights

identity
  rights and 185–7
ideology
  adjudication and 283–300
intention
  tortious, 534–55

judicial control
  resource allocation and welfare rights 63–88
judicial legitimacy
  new approach to 150–53
judicial review
  resource allocation and welfare rights 69, 70–86
  risk regulation standards 120
jurisprudence
  aesthetics and 301–15

Kelsen, H.
  Grundnorm 134-5, 138–9

legality
  contesting 667–72
legitimate expectations
  voluntary undertakings and liability in contract and 212–16
liability
  in contract
    to third party for negligent misstatement 615–43
    voluntary undertakings and 205–26
  in tort, for intention 533–556

Macneil, I.
  bindingness in contractual relations 321–8
  relational contract 330, 331–2
  social contract 331
market
  money and 353-4, 364–6
    Aristotle on 358-60
    Dworkin on 354-8, 360–64
mens rea
  in tort 533–56
money
  market and 353-4, 364–6
    Aristotle on 358-60
    Dworkin on 354-8, 360–64

Nagel, T.
  altruism 651–2
national health service (NHS)
  1999 reforms and medical regulation 437–56
negligence
  psychiatric injury and altruism principle and 645–66
  see also tort
negligent misstatement
  liability in contract to third party for 615–43
NHS *see* national health service
not-wrongs
  Barker's two-tiered 19–31
  wrongs and 25-7, 31–6
  see also rights

opinion
  Human Rights Act 1998 and 89–107

Oslo Peace Process
  law and reality and 469–76

positivism
  stagnant research programme 703–22
Posner, R. A.
  economic account of intention 544–5
psychiatric injury
  altruism principle and, in negligence 645–66
public administration
  accountable, standard setting and 109–30
public administrative law
  judicial control in, resource allocation and welfare rights 63–88
public service
  defining 171–3
  employment in 167–83

Raz, J.
  momentary and continuing legal systems distinguished 150–51
reasons
  content-independence 579–96
reflexivity
  in modern law of contract 477–98
regulation
  contract 334-49, 477–98
  medical, national health service reform 1999 and 437–56
  proceduralising 597–614
  risk, standard setting in 109–30
remedial constructive trust 17-19, 24
remedies
  Blackstone's scheme 4–6
  for wrongs 6–9
  meanings of 9–17
  remedial constructive trust 17–19
  right should prevail where overlap 19–25
  rights and wrongs and 1–4
  see also restitution
rescission
  mode of restitution on, unjust factors and restitution 566–8
resource allocation
  welfare rights and 63–88
responsibility
  fault and 683–701
  outcome, tort and 683–701
restitution
  unjust factors and 557–77
  see also remedies
rights
  see also human rights; not-wrongs
  coercion and 50–51
  constitutive 185–202
  dignity of 271–82
  socio-economic, European Convention on Human Rights and 86–7
  welfare, resource allocation and 63–88
  wrongs and remedies and 1–37
risk regulation
  standard setting in 109–30

rules
default, in contract 367–90

Sales, P.
tort liability for intention 551–2
Sandel, M. J.
theory of community 202–3
Schauer, F.
precedent 514–5
socio-economic rights
European Convention on Human Rights and 86–7
see also rights
sovereignty 131-4, 153-5
judicial reaction to statutes 142–9
sovereignty - *continued*
multiple unranked sources of legal power and 134–40
new approach to judicial legitimacy 150–53
statutes need not constitute absolute exclusionary reasons 140–142
standards
House of Lords and German Federal Constitutional Court compared 391–406
setting in risk regulation 109–30
statements of opinion
compliance with European Convention on Human Rights and 89–107
statutes
judicial reaction to 142–9
Stilitz, D.
tort liability for intention 551–2
Stinchcombe, A.
contractual provisions and hierarchies 326–7
Supiot, A.
public service, defined 172, 173

Teubner, G.
procedural law 602–6
third party
liability in contract to for negligent misstatement 615–43
Thomson, J. J.
maternal-fetal conflict 412–15
view of morality 415–16
tort
mens rea in 533–56
negligence, psychiatric injury and altruism principle and 645–66
outcome responsibility and 683–701
Tripathi, P. K.
foreign precedents in constitutional decision-making 516–7

undertakings
voluntary, liability in contract and 205–26
United States of America
comparative human rights jurisprudence 508–10
dissent in court of last resort 238–9
personhood and citizenship 194–7
unjust factors
restitution and 557–77

valuation
of enrichment received, unjust factors and restitution 568–76

voluntary undertakings
liability in contract and 205–26

Wade, W
rule-based sovereignty 133–4
Weir, A.
tort liability for intention 550–51
welfare rights
resource allocation and 63–88
see also rights
welfarism
in modern law of contract 477–98
woman
pregnant, duty to undergo a Caesarian section 407–36
wrongs
not-wrongs and 25